IN THE

Supreme Court of the United States

October Term, 1925.

No. 324.

HOME FURNITURE COMPANY, GEORGE H. PARK AND JAMES F. KILCREASE, ETC.,
Appellants,

vs.

THE UNITED STATES OF AMERICA, THE INTERSTATE COMMERCE COMMISSION, THE SOUTHERN PACIFIC COMPANY, ET AL.,
Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS.

BRIEF ON BEHALF OF SOUTHERN PACIFIC COMPANY AND EL PASO & SOUTHWESTERN RAILROAD COMPANY.

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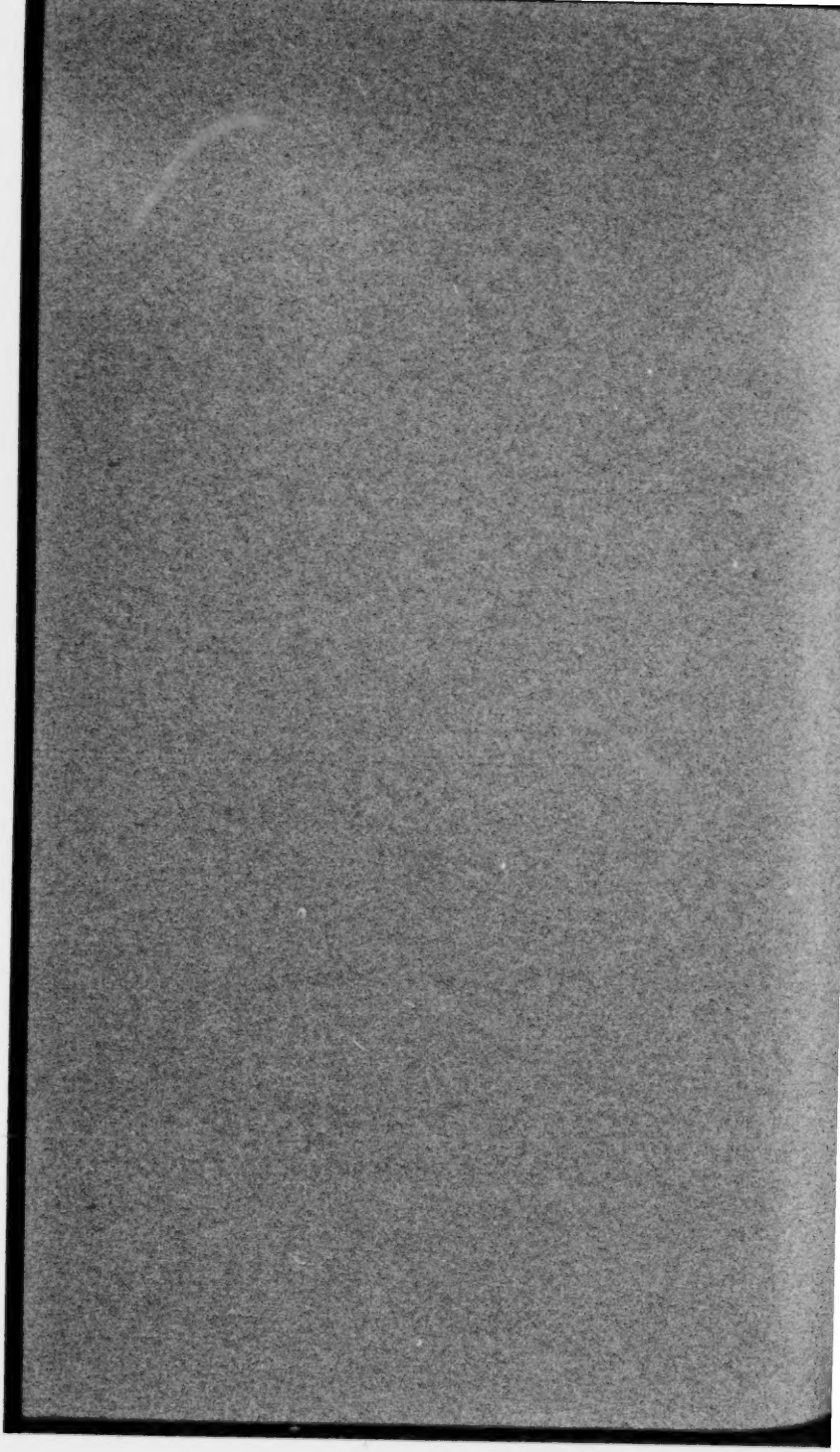

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I.

Statement of the Case.

This is a direct appeal under the Act of October 22, 1913 (38 Stat. 219) from a decree dismissing for want of jurisdiction, on an exception to the venue, a suit by appellants, plaintiffs below, to set aside an order of the Interstate Commerce Commission rendered upon peti-

tion pursuant to paragraph (2) of Section 5 of the Interstate Commerce Act, as amended, and authorizing the acquisition of control by the Southern Pacific Company of certain lines of railway known as the El Paso and Southwestern System. The parties defendant are the United States and the Interstate Commerce Commission, the Southern Pacific Company and El Paso & Southwestern Railroad Company. The bill of complaint shows that the order complained of was rendered on the joint petition of the Southern Pacific Company, a corporation organized and existing under the laws of the State of Kentucky, and of the El Paso & Southwestern Railroad Company, a corporation organized and existing under the laws of the State of Arizona. The suit was brought in the District Court of the United States for the Western District of Texas, El Paso Division, which is not the judicial district wherein is the residence of either of the petitioners before the Commission. All defendants moved to dismiss the suit on the ground that the proper venue was in the District Court of the United States for the District of Arizona or for the District of Kentucky, it affirmatively appearing on the face of the bill of complaint that the order in question related to transportation and was rendered upon petition.

The Act of 1913 contains a clause prescribing the venue for suits to enforce, suspend or set aside any order of the Interstate Commerce Commission, and this case involves the construction and application of that clause. For the purposes of this summary statement of the case it suffices to say that the venues prescribed are in the judicial district wherein—

(1) the residence of the party or any of the parties upon whose petition the order was made, when the order relates to transportation and was made upon petition;

(2) where the matter complained of in the petition before the Commission arises, when the order

does not relate to transportation but is rendered upon petition;

(3) where the matter complained of in the petition before the Commission arises, when the order relates to transportation but is not rendered upon petition;

(4) where one of the petitioners in court has either its principal office or its principal operating office; when the order does not relate to transportation *and* was not rendered upon petition, the matter covered by the order being deemed in such case to arise in the district of the principal office or operating office of one of the petitioners in court.

As the order of the Commission complained of was made upon petition we are not concerned with venue (3) or venue (4). The questions for decision on this appeal are whether the proper venue for plaintiffs' suit was venue (1) or venue (2); and if venue (2), whether the subject matter of the petition before the Commission upon which the order was made can be regarded as arising at El Paso. Plaintiffs' contention is that the order in question does not relate to transportation; that the venue is accordingly in the judicial district where the matter before the Commission arose, and that the matter before the Commission can be regarded as having arisen in every judicial district where the railroads affected by the order run, including the El Paso Division of the Western District of Texas. Defendants contend that the order of the Commission relates to transportation and that, as the suit was admittedly not brought at the residence of either of the parties upon whose petition the order was made, the motions to dismiss were properly sustained. They dispute also the correctness of the proposition that, if the order should be held not to relate to transportation, the matter thereof must be regarded as having arisen in each and every judicial dis-

trict traversed by any of the railroads affected by the order.

In the further statement of the case we shall give a synopsis of plaintiffs' bill of complaint and a summary of the proceedings in the court below, and call attention to such pertinent features of the order of the Commission as may not be brought out in the discussion of the pleadings. We attach importance to the synopsis of the bill of complaint, for it will clearly appear therefrom that the gravamen of the complaint is the alleged direct and necessary effect on transportation services and charges of the order which, for the purposes of this appeal, plaintiffs now claim has no relation to transportation. In other words the bill of complaint shows that plaintiffs are dependent on the defendant railroads to transport to and from their place of business the furniture which they are engaged in buying and selling; that prior to the order the defendants were performing these transportation services in competition with each other; that the effect of the order, in transferring the possession of the El Paso and Southwestern's transportation properties to the Southern Pacific Company to be operated and managed by it, will be to put an end to the competitive transportation services which plaintiffs have been enjoying and to expose them in the future to higher transportation charges for less valuable and efficient transportation service, to their irreparable damage and injury. Here, then, we have a case arising out of provisions of "The *Transportation* Act, 1920", brought against defendants, whose business is that of *transportation*, by plaintiffs whose connection with defendants is that of one requiring *transportation* services from them, in which an order of the Commission is complained of because of its effect upon the *transportation* services that plaintiffs will thereafter receive and the *transportation* charges they will thereafter have to pay, and we have the plaintiffs now seeking a reversal of the decree appealed from on the ground that the order in question has no relation to transportation!

Synopsis of the petition or bill of complaint.

Plaintiffs are the Home Furniture Company, a co-partnership, and the two members of the partnership. Clause I of the bill of complaint states that plaintiffs are resident citizens of El Paso, Texas, engaged in the furniture business, and that, as a part of their business, they buy and sell new and second hand furniture and employ the transportation lines of the Southern Pacific System and the El Paso and Southwestern System for the transportation of their purchased and sold furniture; and that, accordingly, they are now engaged in shipping furniture and in using the lines of the two railway systems for that purpose, and are engaged in shipping goods and merchandise in interstate commerce.

Clause II states that defendant Southern Pacific Company is a corporation organized and existing under the laws of the State of Kentucky and a carrier by railroad engaged in the transportation of passengers and property subject to the Interstate Commerce Act. The states in which it operates railroads are named.

Clause III states that defendant El Paso and Southwestern Railroad Company is a corporation incorporated under the laws of Arizona, operating railroads in Arizona, New Mexico and Texas, and engaged in the transportation of passengers and property subject to the Interstate Commerce Act; that it is a part of the El Paso & Southwestern System (thereafter referred to as the Southwestern System) consisting of certain named railroad companies, all of whose outstanding stock and a portion of whose outstanding bonds are owned, directly or indirectly, by the El Paso & Southwestern Company, a holding company of New Jersey, and all of whose carrier properties are operated under lease by the defendant El Paso & Southwestern Railroad Company.

Clause IV contains the formal jurisdictional averments, describing the suit as of a civil nature in equity, arising under the laws and constitution of the United

States and brought to enjoin, set aside, etc. an order of the Interstate Commerce Commission, the matter in controversy, exclusive of interest and costs, exceeding $3000.

Clauses V, VI, VII and VIII narrate the proceedings before the Interstate Commerce Commission on the "application or petition" of the two defendant railroad companies, and annex as Exhibit C the report and order of the Commission and make the same by reference a part of the bill. A summary of the narrative is as follows: On July 1, 1924, the two defendant railroad companies filed with the Interstate Commerce Commission a petition seeking authority for the Southern Pacific Company to acquire control of the Southwestern System (a) by stock ownership through the acquisition of all the interests therein of the El Paso & Southwestern Company, and (b) by lease from the El Paso & Southwestern Railroad Company of its lines of railroad and by assignment from the last named Company of the leases under which it operated the other Southwestern System lines, the proposed lease, as well as the leases to be assigned, being leases for the period of one year, and thereafter until terminated by either party upon thirty days notice. The petition covered incidentally an application on behalf of the Southern Pacific Company for authority to issue the securities to be exchanged for the securities proposed to be acquired from the El Paso & Southwestern Company. At the same time a separate application was filed on behalf of the Arizona Eastern Railroad Company for a certificate of convenience and necessity, covering the construction of certain new lines in Arizona. Hearings on the applications took place before Division 4 of the Commission, consisting of three Commissioners, and thereafter, as a result thereof, a report and decision was rendered and an order made by Division 4, dated September 30, 1924, (one Commissioner dissenting) authorizing the acquisition of control and the issue of securities applied for, as well as the new construction. Under the authority of this report, decision, and order the acquisi-

tion of control approved will be effected unless restrained by the Court.

Clause IX states the mileage (1139.9 miles) and the location of the Southwestern System, the principal termini being Dawson, New Mexico, Tucson and Clifton, Arizona. The Southern Pacific System is described as comprising, among others, lines of railroad running from points in Texas to and through El Paso in a generally easterly and westerly direction to California, and as being owned, directly or indirectly, by the Southern Pacific Company. It is alleged that the two Systems are parallel and competing lines within the meaning usually and customarily ascribed to those terms; that they are in competition with each other for passenger and freight traffic; that they serve both southern New Mexico and Arizona as well as the City of El Paso, a jobbing and shipping center of developing proportions, with a population of over 80,000 people; that because of such competition and as a consequence thereof the public has had better service for both passenger and freight traffic; that both systems have been active in the solicitation of business and, in order to secure and hold the same, have endeavored to give the maximum of service; that they have advertised extensively and have aided in upbuilding and promoting the principal communities on their lines, including El Paso; that such competition has worked a gradual improvement of their treatment of the public and in the rules, regulations and practices under which their business is conducted; that the Southwestern System originates a rich traffic for which the Rock Island Railroad and the Southern Pacific compete eastbound, the section of the Southwestern System parallel to the Southern Pacific as far as Tucson originating a great deal of lucrative business; that the Southwestern System was built for the purpose of bringing about competition in rates and service with the Southern Pacific System.

After thus describing the transportation conditions and activities of the defendant carriers, plaintiffs show

the transportation purposes of the application to the Commission and the order granted thereon by alleging that the application had for its primary purpose the absorption by the Southern Pacific System of the Southwestern System in order to restore conditions existing before the construction of the latter, and to suppress competition between them, to the end that the Southern Pacific might obtain a monopoly of the transportation business to and through southern New Mexico and Arizona and "for the purpose of depriving shippers and others of the privileges of shipping and travelling over one or two competing lines of railroad at their option" (R., 6).

There is no clause X.

Clause XI alleges that for many years the Southwestern System has maintained its general offices and shops at El Paso, furnishing employment to several hundred people, thus adding to the population of El Paso, putting many thousands of dollars in circulation and contributing to the prosperity of the city and to the value of property, and generally assisting business enterprises in the city; that the Southern Pacific Company likewise maintains shops in El Paso, but its general offices are at San Francisco; that, on information and belief, plaintiffs charge that it is the purpose of the Southern Pacific Company to consolidate the shops and to remove the general offices elsewhere, thus depriving many persons of employment or removing them to other places, to the detriment of the community, as well as of those living in El Paso, and having business enterprises therein, including these plaintiffs.

Clause XII states the injury and damage which plaintiffs will suffer by reason of the order complained of. This is a crucial part of the case, for, to sustain a suit of this kind, it is not sufficient merely to show the invalidity of the order; it must be shown also that the order alleged to be void subjects plaintiffs to legal injury,

actual or threatened. (*Hines, Trustees* v. *U. S.*, 363 U. S. 143.) Clause XII is important because it shows that, if and when this suit is brought in a court of competent jurisdiction and plaintiffs are called upon to meet the defence of want of interest entitling them to sue, their reliance must be upon the relation of the order in question to transportation, i. e., upon its effect on transportation service, transportation facilities and transportation charges. Plaintiffs first set up the loss and injury it is alleged will result to their business and property in consequence of the decrease in the population of El Paso and in the amount of money in circulation which will ensue when the number of the resident employees of the two systems is reduced by unified operation, damages obviously too uncertain and unsubstantial to meet the requirements of the law. They then allege that the order and the acquisition of control which it authorizes will cause them damage and injury as follows:

(a) They will lose the valuable right and privilege they have enjoyed for years of routing their furniture, purchased or sold, over either the Southwestern System or the Southern Pacific System and will have available for transportation of their goods only one transportation system.

(b) They will suffer loss and injury due to depreciation in service and the increase in rates, with laxity in handling claims and traffic, which will naturally result from the suppression of competition authorized by the order.

In other words the gravamen of the complaint is the effect on transportation facilities, transportation services and transportation charges that will be the necessary and direct result of the order attacked—being the order which, to sustain the venue chosen by them, plaintiffs now assert does not even relate to transportation.

As we are not now concerned with the merits of the case we shall deal very summarily with the remaining clauses of the bill that set forth the grounds upon which it is claimed that the order of the Commission is null and should be set aside. But, at the risk of the charge of inconsistency, we shall in stating each ground of attack call attention, *en passant*, to its absolute want of merit, our excuse being the desire to show that the effect of the dismissal of this suit on an exception to the venue will not operate any hardship but will dispose, quickly and cheaply, of a case which must be dismissed on the face of the bill of complaint in whatever venue brought.

Apparently unaware of the provisions of Section 17 of the Interstate Commerce Act, as amended, whereby the Commission is authorized to divide its members into divisions (each to consist of not less than three members) and to distribute its work or functions, in its discretion, between such divisions, and each division is empowered, by a majority thereof, to hear, determine, order, certify, report, etc. as to any such work or functions, any order, decision, report, etc. of any division to have the same force and effect as if made or done by the Commission, subject to a rehearing by the full Commission, plaintiffs charge that the order is null because made by Division 4 intsead of by the whole Commission.

Ignoring the provisions of paragraph (8) of Section 5 of the Interstate Commerce Act, which relieves any order of the Commission made pursuant to the foregoing provisions of the section from all restraints or prohibitions by law, State or Federal, in so far as may be necessary to enable the carriers affected to do anything authorized or required by the order, or regarding paragraph (8) as unconstitutional, thus rendering nugatory the consolidation provisions of Section 5, as well as those relating to pooling and to acquisitions of control less than consolidation, plaintiffs, usurping the functions of the constituted representatives of the State of Texas and acting contrary to their wishes, as evidenced by their

acquiescence in the order, next assail the order because it overrides the prohibitions and restraints of the Constitution and laws of Texas against the combination by consolidation, lease or otherwise of parallel or competing railroads.

Not content with the part of a self-constituted and unwelcome champion of the laws and public policy of their own State, plaintiffs assume to vindicate the rights of the State of Kentucky and charge that the order is null and void because in conflict with prohibitions and restraints in the law of Kentucky similar to those alleged to exist in the law of Texas.

Failing to read aright what is writ large in the amendments made by the Transportation Act to the Interstate Commerce Act, especially the amendments of Section 5, namely, a change of the public policy of the country respecting combinations of railroads, as a result of which the Commission is empowered to authorize certain combinations of carriers, including acquisitions of control by purchase or lease, when found by it to be in the public interest, notwithstanding any resulting destruction or suppression of competition, the Commission being entrusted to weigh the public benefits and advantages of any proposed combination against any loss or lessening of existing competition, plaintiffs charge that the Commission's order is null and void because its effect is to suppress previously existing competition between the carriers affected by the order. Notwithstanding the provisions of paragraph (8) exempting the orders of the Commission from the prohibition of the Sherman law and the Clayton Act, plaintiffs would subordinate such orders to the prohibitions and policy of those statutes.

Having fallen into the error of treating an acquisition of control by one corporation over another, by means of purchase of stock and a short term lease, as a consolidation within the meaning of the consolidation provisions of the Transportation Act (paragraphs (4), (5), and (6) of Section 5 of the Interstate Commerce Act),

plaintiffs say that the Commission was without power to make the order in question until after the adoption and promulgation of a final plan of consolidation. The Congress that adopted the Transportation Act was unusually well informed concerning the subject it was legislating about and unusually careful and accurate in the language it employed. It must be presumed to have used the term "consolidation" in the same sense in paragraph (2) and in the immediately succeeding paragraphs, and always in accordance with its well established legal meaning. Moreover, it appears from the language of paragraph (6) that in order to effect a "consolidation", within the meaning of the statute, a *single corporation* must be created which shall *own* as well as operate all the property. Plaintiffs are virtually asking that the order in question be annulled because in making it the Commission construed the term "consolidation" in accordance with its established legal meaning and, by so doing, gave to the term an accurate and definite meaning, a great desideratum in the practical administration of the statute. It would not only create confusion, but tend to frustrate the purpose of Congress, to regard an acquisition of control of one corporation over another, by purchase of stock and/or lease, as a consolidation within the meaning of the consolidation provisions of the Transportation Act. Congress intended its scheme of consolidation to afford, or aid in affording, a permanent solution of the railroad problem; but an acquisition of control based on stock ownership or lease could be ended and the *status quo* be restored overnight.

The Order of the Commission.

The report and order of the Commission is annexed as Exhibit C and made by reference a part of the bill (R., 4), and will be found on pages 23-32 of the record. Intervening petitions in support of the application of the Southern Pacific Company and the El Paso & South-

western Railroad Company were filed and appearances entered on behalf of the Arizona Corporation Commission, the State Corporation Commission of New Mexico, and a number of cities, towns, and commercial organizations of communities served by the applicants, and representations in favor of granting the authority sought were made on behalf of the Governor of Arizona (R., 25). The city of El Paso and the El Paso Freight Bureau filed an intervening petition protesting against the proposed acquisition of control, but subsequently withdrew their protest (R., 25). The protestants were the Attorney General and Assistant Attorney General of Texas; Walter W. Page for Gilbert Chamber of Commerce; Andrew M. McDearmott on his own behalf; and Jos. U. Sweeney and Edward C. Wade, *amici curiae*. The other appearers are F. A. Jones and H. B. Wilkinson for Mesa Chamber of Commerce; F. A. Jones for Ray & Gila Valley Railroad Company; and E. L. Green for Casa Grande Chamber of Commerce; but their attitude towards the application is not disclosed. (R., 24). None of the protestants was represented at the hearing upon the application. The report states that their representations, however, were duly considered. (R., 25).

It appears from the report (R., 25) that the Attorney General of Texas made

> "certain representations with respect to the Texas companies embraced in the Southwestern System and has requested that any order entered by us be so conditioned as not to violate the provisions of the Constitution and statutes of that State relating to consolidation of Texas companies with foreign corporations, the acquisition of control by one corporation of another corporation owning or having under its control a parallel or competing line, and the leasing of railroads of Texas corporations by foreign corporations."

It appears from the bill of complaint (R., 9 and 10) that the two Texas corporations forming part of the South-

western System are the El Paso and Southwestern Railroad Company of Texas, owning only *four* miles of railroad, and the El Paso and Northeastern Railroad Company with a mileage of only *nineteen* miles (R., 9 and 10). The law of Texas in respect to railroad leases, Article 6697 of the Revised Statutes,[1] provides that any railroad not exceeding *thirty* miles in length, connecting at or near the state line with any other railroad, may be leased by the Company owning such other railroad, on such terms and for such time, not exceeding *ten* years, as may be approved by the railroad commission of Texas.

On September 30, 1924, a favorable report upon the application was made and an order approving and authorizing, as in the public interest, the proposed acquisition of control was entered. No rehearsing was applied for. No protestant has appealed to the court. We are, therefore, justified in saying that the constituted authorities and the people of Texas, including the City of El Paso and the El Paso Freight Bureau, acquiesced in the report and order of the Commission and joined with the States of Arizona and New Mexico and the communities therein to make unanimous the approval of the Commission's finding that the acquisition of control applied for was in the public interest. This general harmony was not disturbed until, on October 23, 1924, a single shipper, a partnership dealing in second-hand furntiure in El Paso, responded to the call of the *amici curiae* for a shipper in whose name to continue in the courts their lone opposition.

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[1] Art. 6697. Right to lease another road.—Any railroad not exceeding thirty miles in length, connecting at or near the state line with any other railroad, may be leased by the company *owning* such other railroad, on such terms and for such time, not exceeding ten years, as may be approved by the railroad commission of Texas; provided, that said commission may refuse to approve the same for any cause which it may deem sufficient; and provided, further, that at any time before or after the expiration of such lease, the same may be renewed or another lease executed, subject to the provisions and limitations of this chapter; and provided, further, that the provisions of this chapter shall not apply to railroads whose total mileage in this state may exceed thirty miles, although a portion thereof so connecting at the state line may not exceed thirty miles in this state. (Acts 1899, p. 73, sec. 1).

The report of the Commission speaks for itself. In conferring power upon the Commission to authorize an acquisition of control of the character now in question, when found upon investigation and after hearing to be in the public interest, Congress left the Commission free to ascertain the factors to be considered in each particular case and the relative weight and importance to be given to each, such factors including, on the one hand, suppression or diminution of competition and, on the other, increased efficiency, decreased cost of transportation, and the like. As bearing upon the relation of the order to transportation we call attention to the fact that the main factors deemed by the Commission to be material to the question of the public interest related to transportation, e. g. the Southwestern System of lines form a connecting link between the Rock Island and the Southern Pacific lines; they and the Southern Pacific System of lines west of El Paso, while in a sense parallel, serve different communities and industrial sections, their common points being important points of interchange of traffic to and from communities served by one and not the other; as to such traffic and as to transcontinental traffic better coordination and more efficient and economical operation will follow the acquisition of control applied for, and relations to the traveling and shipping public and to public authorities will be simplified and improved; the construction of additional transportation facilities in the form of double tracks will be avoided; the control sought will result in operating economies and make possible unification of standards and practices, etc., such economies and improvements in transportation service and practices being described in detail.

Of course, in order to show that the order relates to transportation, it is not necessary to show that every part of the order relates to transportation. It suffices if a material part thereof bears such relation.

Proceedings in the lower court.

The order of the Commission in question is dated September 30, 1924, and became effective thirty days from the date thereof (R., 32). On October 23, 1924, plaintiffs' bill of complaint was filed in the United States District Court, Western District of Texas, El Paso Division (R., 1). On October 27, 1924, the bill was presented to the District Court at El Paso with an oral motion by plaintiffs that the presiding judge (Judge Colin Neblett, sitting by designation) convene a special court of three judges to hear the application for an injunction. This motion was denied for want of jurisdiction, on the ground that it appearing from a reading of the complaint that the residence of the Southern Pacific Company was in the State of Kentucky and the residence of the El Paso & Southwestern Railroad Company was in the State of Arizona, the venue of the suit was in Kentucky or Arizona (R., 32-3). No further action was taken by plaintiffs until December 16, 1924. In the meantime the United States and the Interstate Commerce Commission, through their counsel, and the two defendant carriers, through their counsel, had on November 15 and 17, 1924, filed pleas to the jurisdiction, on the ground that the venue lay, if the suit were maintainable at all, in the District Court of the United States for the District of Arizona or for the District of Kentucky, at plaintiffs' election, the reasons given in support of the pleas being those now familiar to this Court (R., 33-34). On December 16, 1924, plaintiffs again appeared before the District Court at El Paso, forty-eight days after the signing and entry of Judge Neblett's order, and asked the presiding judge (Judge Wm. H. Atwell) to call to his assistance a Circuit Judge and another District Judge to hear and rule upon defendants' pleas. For reasons set forth in a written opinion, summarized in the succeeding paragraph of this brief, Judge Atwell granted

plaintiffs' motion for a special court and assigned the cause for hearing on January 10, 1925, at New Orleans (R., 35-38).

In a written opinion (*Home Furniture Co. et al.* v. *United States et al.*, 2 F. (2d) 765) Judge Atwell referred to the expiration of forty-eight days since Judge Neblett's decision against the jurisdiction of the Court, to the suggestion of counsel for defendants that they were not asking to have their pleas to the jurisdiction passed upon at this time but that at some more convenient date there might be available three judges, when such action might be taken, and to the insistence of plaintiffs that the cause be speeded. He expressed the view that in cases like the one before him a single judge was authorized to pass upon such questions as the jurisdiction of the Court; and, if so, that he had no authority or power to review Judge Neblett's ruling, citing *Republic* v. *Deland*, 275 F. 634, and *Brown Drug Company* v. *U. S.*, 235 F. 603; but that, notwithstanding his views, "the delicacy of the present situation" caused him "to conform to the desire of counsel" (R., 35-37).

The cause was heard at New Orleans by a special court, composed of one circuit judge and two district judges, and was submitted upon defendants' pleas to the jurisdiction. The court, finding that the order of the Commission complained of related to transportation, sustained the pleas and dismissed the bill of complaint (R., 39). Appellants' four assignments of error are to the effect that the Court erred in holding that the order of the Commission related to transportation and in dismissing the bill of complaint.

II.

Argument.

The nature of this case and of the questions presented for decision are such as to make the mere statement of the case an argument in support of the decree brought here for review, an argument so clear and convincing, in our opinion, as hardly to require or admit of further elucidation or strengthening. It clearly appears from the analysis of the bill of complaint and of the report of the Commission contained in the statement of the case that the characterizing substance, the gist, of the order is the part that authorizes the transfer to the Southern Pacific's possession, management and operation of the Southwestern's transportation plant, embracing the locomotives, cars, and all instrumentalities and facilities of shipment or carriage, things included in the statutory definition of the term "transportation".[2] This is what applicants purposed to accomplish and this is what the order was intended to effect. It likewise clearly appears that the parts of the order which plaintiffs now seek to place the emphasis upon—authority to purchase stock and to issue securities—merely provide the means for accomplishing the ultimate purpose of the order. The statement of the case disclosed that the cause of action attempted to be set out in the bill of complaint is expressly based on the natural and necessary relations of the order to transportation, and that the factors considered by the Commission in reaching the conclusion that would determine whether it would grant or deny the order applied for, namely, whether the same was in the public interest, were matters relating to transportation. In other words, it is manifest from the statement of the case that the purpose of the application to which the order owes its existence was to bring

[2] Section 1, paragraph (3) of the Interstate Commerce Act, as amended.

about certain transportation conditions; that the order was made because its transportation effects were found to be in the public interest; and that this suit to set aside the order was brought because its effects on transportation are claimed by plaintiffs to damage and injure that part of their business which involves the transportation of furniture bought and sold. And all the foregoing is true, even if we disregard the statutory enlargement of the meaning of the word "transportation", and look only to the definitions found in the dictionaries.

The conclusion that seems to us so obvious from the mere statement of the case, that the Commission's order in question relates to transportation, rests upon broad grounds. It does not call for citation of authorities in its support. It has not involved a search of the dictionaries for definitions or an exigesis of the Interstate Commerce Act, or even of the provisions thereof relating to acquisition of control, or a meticulous examination of the terms of the venue clause. While we believe that we might safely rest in the position where the statement of the case has left us, yet, as the question presented is *res nova* and of general importance, we shall now proceed to consider the definitions of the word "transportation" in the Interstate Commerce Act, as well as in the dictionaries, and of the word "relate", call attention to the few relevant decisions of this Court, examine more critically the text of the venue clause, and incidentally deal with such contentions of plaintiffs as do not refute themselves. We expect to be able to show that the definitions support the case for appellees; that there is nothing in the venue clause or in its legislative history that militates against our position; and that our construction of the words—relate to transportation—does not conflict but harmonizes with the decisions of this Court on the subject.

Before presenting an argument along the lines indicated, we shall digress a moment to point out that the venue clause in question, although found in an Urgent

Deficiency Appropriations Act, must be treated as a part of the Interstate Commerce Act, and hence, must be construed and applied in harmony with the provisions and definitions of that Act as it is to-day.

A statutory provision prescribing the venue for suits to review orders of the Interstate Commerce Commission naturally belongs to the Interstate Commerce Act. The original venue clause concerning such suits was enacted as an amendment to section 16 of that Act.[3] It was superseded by the adoption of the Commerce Court Act, and was replaced, on the abolition of the Commerce Court, by the provisions in question of the Act of 1913. If authority be required for regarding the pertinent provisions of the legislation of 1913 as part of the Interstate Commerce Act, it is afforded by the case of *Proctor & Gamble* v. *United States*, 225 U. S. 282, where it was held that the whole of the Commerce Court Act was to be construed and applied as if it were a part of the Interstate Commerce Act. As a result of regarding the venue clause before us as a part of the Commerce Act the following rules and principles are to be observed in its construction and application.

First, in determining the meaning of the terms used in that clause regard must be paid to the provisions, and especially to the definitions, found in the Interstate Commerce Act. Paraphrasing what was said in *Proctor & Gamble* v. *United States*, the venue clause of the Act of 1913 was intended to be a part of the existing system for the regulation of interstate commerce, established by the original adoption in 1887 of the act to regulate commerce and expanded by the subsequent amendments of that act. It was not intended to ignore, but to provide a method of enforcing or reviewing orders of the Commission that would harmonize with and be applicable to, the definitions and provisions of the Commerce Act and the functions of the Commission.

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[3] Act of June 29, 1906, 34 Stat. 584, 592.

Second, the Commerce Act of which the venue clause must be considered a part and with reference to the definitions and provisions of which the venue clause must be construed and applied is the amended and developed Interstate Commerce Act of to-day, with its definitions and with the new and enlarged powers and functions which it has conferred upon the Commission. This is the rule of construction announced and applied in *Pennsylvania Co.* v. *United States*, 236 U. S. 351, decided in 1915, a suit to enjoin an order of the Commission requiring the Pennsylvania Company to desist from certain discriminating rates and practices found by the Commission to be in violation of Section 3 of the Interstate Commerce Act. One of the contentions of the United States, disputed by the Pennsylvania Company, was that the proviso to Section 3—

> "but this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business."

though not repealed, must be read in the light of later amendments.

In dealing with this contention the Court said (pp. 362-3):

> "Section 3 was a part of the original act, and remains unchanged, but there are certain amendments to the Act which are to be read in connection with §3 as if they were originally incorporated within the Act. *Blair* v. *Chicago*, 201 U. S. 400, 475. The Act as amended June 29, 1906, c. 3591, 34 Stat. 584, defines what is meant by common carriers—engaged in transportation by railroad—which are brought within the control of the Act, and a railroad is defined to include all switches, spurs, tracks and terminal facilities of every kind, used or necessary in the transportation of persons or property designated in the Act, and also all freight depots, yards and grounds used or necessary in the transportation or delivery of any of said prop-

erty. Not only does the Act define railroads, but it specifically defines what is meant by transportation, which is made to include 'cars and other vehicles and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported.' It is made the duty of every carrier 'subject to the provisions of this Act to provide and furnish such transportation upon reasonable request therefor, and to establish through routes and just and reasonable rates applicable thereto'; and on June 18, 1910, c. 309, 36 Stat. 539, 545, it was additionally provided that the carrier should 'provide reasonable facilities for operating such through routes and make reasonable rules and regulations with respect to the exchange, interchange, and return of cars used therein, and for the operation of such through routes, and providing for reasonable compensation to those entitled thereto.' See *United States* v. *Union Stock Yard & Transit Co.*, 226 U. S. 286, and as to the character of such commerce, *Illinois Central R. R.* v. *Railroad Commission of Louisiana*, decided February 1, 1915, *ante*, p. 157.

It follows that the provisions of §3 of the Act must be read in connection with the amendments and subsequent provisions, which show that transportation as used in the Act covers the entire carriage and services in connection with the receipt and delivery of property transported."

The ruling in *Blair* v. *Chicago*, 201 U. S. 400, on the page (475) cited, was that

> "a statute amended is to be understood in the same sense exactly as if it had read from the beginning as it does amended."

The same conclusion will be reached, independently of the authorities cited, from a consideration of the fact (which

is evidenced by the provisions of the Transportation Act, 1920, and which is, moreover, a matter of public notoriety and history) that before passing the Transportation Act Congress made a most thorough, intelligent and comprehensive examination of the federal statute law relating to the powers, duties, orders, etc. of the Interstate Commerce Commission, including, it must be presumed, the venue clause now in question. It is a necessary inference from the failure to amend that Congress adopted the venue clause and intended it to be treated as a part of the amended and enlarged commerce act. It must, therefore, be construed and applied as if it had formed part of and was adopted at the same time as the Transportation Act.

It follows that, in acertaining the meaning of the word "transportation" for the purpose of determining when an order of the Commission relates to transportation, we do not treat the provisions of the Act of 1913, abolishing the Commerce Court and providing for cases formerly within the jurisdiction of that Court and for the venue thereof, as independent legislation having no connection with the Interstate Commerce Act. We are not bound even by the meaning of the word in the minds of the members of the Committees which framed the statute or in the mind of Congress which enacted it, if in the meantime by reason of subsequent changes in the Interstate Commerce Act the word has come to have a broader meaning, or if a broader or more sensible meaning may reasonably be imputed to the better informed Congress of 1920. We certainly cannot follow plaintiffs' counsel in seeking to confine its scope and meaning to what they believe to have been in the mind of one of the members of one of the Houses of Congress in 1913, even though that member had a direct part in formulating the clause in question. On the contrary we must construe the term so that it may fit in and be applicable to the provisions of the Interstate Commerce Act in its present form and so that it may conform and be in harmony with the defi-

nitions of that Act. Nothing that we have said above, however, is to be construed as an admission that there is any good reason for believing that either committee in charge of the bill or Congress or any member thereof in voting the bill into a law intended to ignore the definition of "transportation" then in the Interstate Commerce Act or to use the word in a sense so narrow, if that were possible, as to make the Commission's order here complained of bear no relation to transportation.

Returning now from our digression to a consideration of definitions, we find in paragraph (3) of Section 1 of the Interstate Commerce Act, as amended by the Transportation Act, the following enlargement or extension of the meaning of the term "transportation":

> "The term 'transportation' as used in this Act shall include locomotives, cars, and other vehicles, vessels, and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof, and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported."

A legislative declaration (substantially identical with that just quoted) as to the things to be included in the word "transportation" has been in the Interstate Commerce Act since the Act of June 29, 1906 (34 Stat. 584), where it originated. The dictionaries show that the word "transportation", besides meaning the act of transporting, conveyance, the carriage of persons or commodities from one place to another, is employed, especially in this country, to mean the vehicles or means of carriage, and, again, the charges therefore. For instance, one of the definitions of transportation given in the Standard Dictionary is—"(U. S.) Vehicles used in transporting; means of conveyance; also, charge for conveyance." See also The Standard Dictionary & Cyclopedia, *verbum* transportation. The words "relate to" are too familiar

to require resort to a dictionary. We give, however, one of the definitions of "relate" found in Webster's New International Dictionary—"To stand in some relation; to have bearing or concern; to pertain; refer." We submit without further argument that the definitions lead to the conclusion that would follow from a mere reading of the report of the Commission and of the bill of complaint, namely, that the order complained of relates to transportation. They show that appellees now, and the Commission when it passed upon the application, and plaintiffs' counsel when drafting the complaint, all were right in regarding the order of the Commission as having relation to transportation—to transportation services, to the cost thereof and the charges therefor. An exclusive relation to transportation is, of course, not required.

Adverting now to plaintiffs' contentions it may be predicated of them as a whole that they are discredited by the conclusion which it is claimed they lead to. Plaintiffs argue from them that the word "transportation" in the venue clause means only actual carriage, only the actual movement of freight or passengers after they have reached the vehicles of carriage. They exclude from the term all instrumentalities and facilities of transportation and all services in connection with the receipt, delivery and handling of property transported, except those directly concerned in the actual movement of shipments. Logically they should exclude transportation charges, and regulations and practices in regard thereto. That this is a too narrow definition of "transportation" is manifest. It discards all but one of the dictionary definitions. It disregards the legislative declaration as to the broad sense in which the word must be regarded as employed in the Interstate Commerce Act. When we consider the definition of "railroad" found in the same paragraph of Section 1, which is declared to include the immovables of the transportation plant, it is evident that by the term "transportation" Congress intended to embrace all the movables and all the operations of the

plant in the manufacture, sale and delivery of the intended product, which is transportation. It is idle to say that an order of the Commission which has for its main purpose and effect to transfer the possession of the transportation plant of the Southwestern System to the Southern Pacific to be operated by the latter, which was made on the ground that cheaper and better transportation would be manufactured through joint operation of the two plants, and which plaintiffs, formerly purchasers of transportation from the two plants, complain of because it will leave them with only one seller of transportation to deal with instead of two and will result in an inferior product sold at increased prices, it is idle, we submit, to contend that such an order has no relation to or bearing upon transportation. The contentions of plaintiffs as to the narrow scope and meaning to be given the term "transportation" find no support in the decisions of this Court. In *Illinois Central Railroad Company* v. *Public Utilities Commission*, 245 U. S. 493, 504-5, it was held in effect that an order of the Interstate Commerce Commission based on the finding of such disparity between schedules of interstate rates and of intrastate rates as to constitute an undue and unjust discrimination against interstate commerce, and ordering the carriers to cease and desist from such discrimination, was an order relating to transportation and, having been rendered upon petition, was required by the Statute of 1913 to be brought at the residence of the petitioner. In other words, an order to relieve interstate commerce generally in a certain region from the undue and unreasonable prejudice and disadvantage of the maintenance of a lower scale of rates upon intrastate commerce belongs to the class of orders that "relate to transportation" within the meaning of the venue clause of the Act of 1913, although no actual carriage or movement of freight is involved. *Skinner & Eddy Corp.* v. *United States*, 249 U. S. 557, was a suit brought by a shipper to set aside an order of the Interstate Commerce Commission rescinding a fourth

section order, the effect of the rescinding order being the filing of tariffs increasing certain through rates which had been reduced under the original order. The defendants were the United States, the Interstate Commerce Commission, and the railroad companies (sixteen in number) upon whose application the fourth section exemption order had been originally rendered. The suit was brought in the District Court of the United States for the District of Oregon, the residence of one of the railroad companies petitioning for the original order. In disposing of an exception to the jurisdiction (p. 562) the Court held that the suit had been brought at the proper venue. In other words, the ruling of the Court was that such matters as the enforcement of the long and short haul clause of Section 4, the granting of relief therefrom, the resulting relationship between rates, questions of discrimination involved therein, are all matters that "relate to transportation" within the meaning of the venue clause of the Act of 1913, although no transportation within the narrow meaning of the word contended for by complainants was involved.

One of plaintiffs' contentions is that the United States and the Interstate Commerce Commission have no right to object to the venue, that the defendant railroad companies are not necessary parties, and that, being unnecessary parties, their objection to the venue may be disregarded. This contention evidences a complete misconception of the nature and purpose of the venue clause as well as ignorance of the rulings of this Court on the subject. The United States can be sued only with its consent and may prescribe the terms of its consent, including the venue of permitted suits. It, of course, has the right to insist that the terms of its consent be observed, and that they be strictly construed as well as strictly followed. And it was so held in *Illinois Central Railroad Company* v. *Public Utilities Commission, supra,* at page 504 of the opinion, and in *Peoria & Pekin Union Rwy. Co.* v. *United States,* 263 U. S. 528, 536. In the last

cited case a defendant railroad company had waived the right to be sued at its residence, but it was ruled, nevertheless, that the United States could insist upon the venue prescribed by the statute.

Before considering the contentions of plaintiffs based on what they call the history of the legislation in question we shall refer again to the text of the venue clause, not for the purpose of adding anything material to the brief analysis thereof made in the statement of the case (*supra*, p. 2), but rather for the purpose of explaining why, in this case, further discussion of the text may be dispensed with. The scheme of the venue clause, so far as its framers can be said to have had an intelligent and consistent scheme (for it was the hasty work of Committees on Appropriations in an unfamiliar field of legislation), was to provide a general rule to cover the majority of cases and to provide for exceptional cases in the two clauses beginning with the word "except".[4] It seems to have been correctly assumed that the vast majority of the Commission's orders would relate to transportation and be made upon petition, and the general rule, intended to cover such cases, followed the still more general rule that a man ought to be sued at his own domicil, this on the theory that the real party in interest in a case attacking an order made upon petition was the party upon whose petition the order was made. When, however, an order of the Commission is made upon petition but does not relate to transportation, the general

[4] "The venue of any suit hereafter brought to enforce, suspend, or set aside, in whole or in part, any order of the Interstate Commerce Commission shall be in the judicial district wherein is the residence of the party or any of the parties upon whose petition the order was made, except that where the order does not relate to transportation or is not made upon the petition of any party the venue shall be in the district where the matter complained of in the petition before the Commission arises, and except that where the order does not relate either to transportation or to a matter so complained of before the Commission the matter covered by the order shall be deemed to arise in the district where one of the petitioners in court has either its principal office or its principal operating office. In case such transportation relates to a through shipment the term 'destination' shall be construed as meaning final destination of such shipment."

rule by its terms does not apply, and the venue was fixed in the district where the matter complained of in the petition before the Commission arises. So far we meet with no trouble, except the difficulty, to which we shall presently revert, of determining in what district a matter so complained of arises. We now meet with an insuperable difficulty arising from the use of inept language and confusion or absence of thought, for in dealing with an order relating to transportation but not made upon petition, the venue prescribed is still "in the district where the matter complained of in the petition before the Commission arises"—and there is no such petition! There is also ineptitude of language and confusion of thought in the second "except" clause, which applies to orders that do not relate to transportation or to "a matter so complained of before the Commission", in which cases "the matter covered by the order" shall be deemed to arise in the district where one of the petitioners in court has either "its" principal office or principal operating office. As the order complained of in this case was unquestionably made upon petition, we are not concerned with the above indicated inaccuracies and ambiguities of the venue clause. In the confident belief, moreover, that the argument urged in support of appellees' side of the case will not thereby be affected or otherwise prejudiced, we shall not burden the Court with a discussion of orders that lie in the doubtful zone between transportation and non-transportation orders or with attempts to explain why the framers of the venue clause made the distinction they did between orders made upon petition that relate to transportation and orders made upon petitions that do not relate to transportation. To show that our interpretation of the term transportation has not emptied the "except" clauses of their substance we give the following instances of orders which in our opinion do not relate to transportation, viz: accounting orders, such as orders prescribing depreciation charges; valua-

tion orders; orders dealing solely with issuance of securities, such as permitting the issue of refunding mortgage bonds or the capitalization of expenditures out of current income for capital purposes.

We referred above to the difficulty in some cases of determining in what district the matter covered by the Commission's order or by the petition before the Commission arises. Suppose plaintiffs should succeed in establishing their contention that the order they complain of does not relate to transportation, their success would be due to having convinced this Court that the controlling feature of the order, for purposes of venue, is the part that authorizes the issuance of securities or the part that authorizes the purchase of securities. Plaintiffs would still have to show that their suit was brought at the prescribed venue, where, and not elsewhere, the United States has consented to be sued. This means that plaintiffs must satisfy the Court that the matter of the issue of securities by the Southern Pacific Company, a Kentucky corporation, or the matter of the purchase by the Kentucky corporation of securities from the El Paso & Southwestern Company, a New Jersey corporation, under a contract made in New York, is a matter that arises in the Western District of Texas.

We have not yet dealt with the last sentence of the venue clause—

> "In case such transportation relates to a through shipment the term 'destination' shall be construed as meaning final destination of such shipment."—

which it is claimed by plaintiffs shows that the term "transportation" was used only in the narrow sense of the actual carriage of shipments after being loaded into cars and the cars made up into trains. It will be observed that the term "destination" does not appear elsewhere in the venue clause. The quoted sentence is therefore meaningless. It evidently does not belong in the venue clause as finally adopted. It was inadvertently left in

by the Conference Committee.[5] This will sufficiently appear from the following excerpt from H. R. 7898, 63d Congress, 1st Session, in the House of Representatives, October 7, 1913, in which will be found the Senate amendments numbered, the parts of the House Bill eliminated by the amendments erased, and the amendments italicised:

> "The venue of any suit hereafter brought to enforce, suspend, or set aside, in whole or in part, any order of the Interstate Commerce Commission shall be in the judicial district (62) ~~where some or all of the transportation covered by the order has either its origin or destination~~ *wherein is the residence of the party or any of the parties upon whose petition the order was made*, except that where the order does not relate to transportation (63) *or is not made upon the petition of any party* the venue shall be in the district where the matter complained of in the petition before the commission arises, and except that where the order does not relate either to transportation or to a matter so complained of before the commission the matter covered by the order shall be deemed to arise in the district where one of the petitioners in court has either its principal office or its principal operating office. In case such transportation relates to a through shipment the term 'destination' shall be construed as meaning final destination of such shipment."

The sentence in question may be likened to the vestigial organs which anthropologists tell us are found here and there in the human anatomy, such as the relic muscles which in man's prehuman stage used to move the ears or to raise the hair; and it should now be regarded as a functionless vestige or trace showing merely the evolutionary path of the venue provision.

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[5] After offering the Senate amendments Senator Walsh said it will now be necessary to strike out the last sentence of the venue clause in the House Bill, which statement was accepted by Senator Overman, Chairman of the Senate Committee on Appropriations.
Cong. Rec., Vol. 50, Part 6, page 5425, 63d Cong. 1st Sess.

We have now come to an appropriate place at which to consider the contentions of plaintiffs based on what they call the legislative history of the venue clause. If by legislative history were meant prior legislation on the subject, the Interstate Commerce Act, as amended, and statutes prescribing the venue for suits of this character, there would of course be no objection to a resort by the Court to such sources for any needed light they may throw upon the questions raised by this appeal. We ourselves are insisting that the venue clause must be construed and applied as a part of the Interstate Commerce Act with all its amendments up to date. But what plaintiffs mean by legislative history is the evolutionary history of the Act of 1913, what occurred during the passage of the law through the 63d Congress, especially, if not exclusively, the form of the venue clause as it was when the bill first passed the House, and which was afterwards rejected, and the debates in Congress, or rather an explanation by one member of the Senate who was not in charge of the bill in course of passage (*infra*, pp. 33, 34).

We question the necessity and the propriety of a resort to such extraneous aid. This case calls simply for the ascertainment of the scope and meaning of the words "relate to transportation", having regard not only to the popular signficance of the word "transportation" as evidenced by the dictionary definitions but having special regard to the legislative extension of its meaning placed in the Interstate Commerce Act as long ago as 1906. "If there be ambiguity in them it is the office of construction to resolve it." *Banco Mexicano* v. *Deutsche Bank*, 263 U. S. 591, 602. See also *Caminetti* v. *United States*, 242 U. S. 470, 490. The objection to subjecting judicial construction to the evolutionary history of the Act is greatly strengthened by the circumstance, pointed out above (pp. 20-24), that the venue clause is to be regarded as a part of the Interstate Commerce Act in its present form and is to be construed and applied

as if it had been introduced and adopted at the same time as the Transportation Act and by the same Congress. Hence its interpretation is not to be controlled or limited, or even influenced, by the views or the limitations upon the horizon of the members of the Congress that enacted it.

If, however, this Court deems it proper to look to what occurred in the course of the passage of the law for light upon the legislative intent, its search will be fruitless. The sources of light to which under well settled principles the Court will confine itself are reports of committees, explanatory statements in the nature of a supplemental report made by a committee member in charge of a bill in course of passage, and changes made in the form of the bill in the course of its passage. *Duplex Co.* v. *Deering*, 254 U. S. 443, 474-5; *United States* v. *St. Paul, M. & M. Ry. Co.*, 247 U. S. 310, 318. It is settled by repeated decisions that "the debates in Congress expressive of the views and motives of individual members are not a safe guide, and hence may not be resorted to, in ascertaining the meaning and purpose of the law-making body." *Duplex Co.* v. *Deering, supra.* Now the excerpt given above (p. 31) from the H. R. 7898 shows that the provision of the venue clause now involved was a result of Senate Amendment. The amendment was made on the floor of the Senate and accepted without debate.[6] The report of the Conference Committee contains nothing but the bare statement that the House receded from its disagreement with the Senate amendment, referred to by number.[7] We have found no report of any Senate or House Committee containing any discussion of the venue clause. There are no explanatory statements in the nature of a supplemental report made by a committee member in charge of the bill in course of passage. There remains only the form

[6] Cong. Rec., Vol. 50, Part 6, page 5425, 63d Cong., 1st Sess.
[7] H. R. Report No. 91, 63d Congress, 1st Session.

of the venue clause contained in the House Bill before it went to conference (*supra*, p. 31). A resort to a provision once appearing but subsequently rejected in course of passage cannot be justified on the theory, urged by plaintiffs, that it means the same thing as the provision subsequently substituted therefor and enacted. (*Penna. R. R. Co.* v. *International Coal Co.*, 230 U. S. 184, 199). If the meaning of the language in the House Bill and of the language of the statute be different, we know of no precedent for giving any effect to the former except, perhaps, the biblical adage respecting the promotion of the stone rejected of the builders, which has not heretofore been regarded as a canon of statutory construction. Finally, the form of the House Bill under discussion throws no worthwhile light upon the meaning of the enacted clause. Resort thereto would result in the substitution of confusion for reasonable clearness, whereas the seeking of such extraneous aid is "only admissible to solve doubt and not to create it." *Wisconsin R. R. Commission* v. *C. B. & Q. R. R. Co.*, 257 U. S. 563, 589.

In arguing as we have against an attempt to ascertain the meaning of the enacted statute by a resort to the form of the venue clause in the House Bill we are not to be understood as conceding that plaintiffs' case would be advanced by a consideration of the venue clause at one time preferred by the House. Notwithstanding such consideration the word "transportation" must be interpreted to harmonize with the definitions of the Interstate Commerce Act, and the allegations of the bill of complaint and the report of the Commission will still show that the order complained of relates to transportation.

If our contention that this Court should not be controlled or influenced by the limited horizon of the Congress which passed the venue clause needed further support, it would be afforded by the debate or colloquy in the Senate over the venue clause of the Act of 1913, re-

ported in Vol. 50, Cong. Rec., Part 6, pages 5616 ffg. 63d Congress, 1st Sess. The colloquy took place after the conference report, when it was too late to amend. It shows how little intelligent attention the venue clause had received. It also shows, and this is important only in the improbable event that the Court will resort to Senator Walsh's explanations for assistance in interpreting the statute, that these explanations were again given and were not regarded as satisfactory by the Senators whose inquiries evoked them.

It seems to be conceded that the suit was not instituted at the residence of either the Southern Pacific Company or of the El Paso & Southwestern Railroad Company. The lower court so ruled, and its ruling has not been made the subject of any assignment of error. The correctness of the ruling is well settled by the decisions of this Court. *In re Keasbey and Madison Company*, 160 U. S. 221, 229; *Southern Pacific Company* v. *Denton*, 146 U. S. 202, 205; *Seaboard Rice Milling Co.* v. *Chicago, R. I. & P.* October Term, 1925, Decided March 1, 1926.

If the views of the plaintiffs as to the absence of any relation of the order complained of should prevail, it will still be necessary for them to show that the matter of the Commission's order or of the petition upon which it was made is a matter that arises in the Western District of Texas (*supra*, p. 30).

We submit that plaintiffs are depending upon the relations of the order to transportation to show an interest sufficient to entitle them to sue and upon the absence of any such relations to show that the suit was brought at the prescribed venue.

We ask that the decree appealed from be affirmed.

Respectfully submitted,

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